BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

DEANNA M. STOCKEBRAND Claimant	)	
VS.	)	Docket No. 1,049,247
AFFILIATED MEDICAL SERVICES LAB Self-Insured Respondent	)	

ORDER

Respondent requests review of the March 15, 2010, preliminary hearing Order entered by Administrative Law Judge Thomas Klein.

ISSUES

The Administrative Law Judge (ALJ) found claimant's accident compensable under the Kansas Workers Compensation Act as it occurred on respondent's premises during a lunch or recreation period that was a regular incident of employment. The ALJ granted claimant 8.14 weeks of temporary total disability benefits.

Respondent contends claimant's accident is not compensable under the Kansas Workers Compensation Act because the accident occurred while claimant was allegedly engaged in a social event that she was not required to attend. Accordingly, respondent argues K.S.A. 44-508(f) bars this claim.

Claimant contends the ALJ should be affirmed.

The only issue presented on this appeal is whether claimant was engaged in a social event that bars her from receiving workers compensation benefits.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the undersigned Board Member finds as follows:

Claimant works for respondent as a billing clerk. On December 22, 2009, claimant tripped and fell at work. The fall broke her left arm and right leg, tore a meniscus in her right knee, and tore the rotator cuff in her left shoulder.

Respondent periodically held snack days. December 22, 2009, was such a day. The employees set out the snacks that they bring into work and the employees snack throughout the day. The day before claimant's accident, a snack day was held for respondent's couriers, client service department, and processing department. December 22, 2009, however, was the designated snack day for the technicians, administrators, and the billing department. That morning the snacks were placed in the conference room, where a musician was scheduled to perform from 10 a.m. to noon. Respondent encouraged, but did not require, participation.

Claimant's accident occurred shortly before 10 a.m. as claimant was returning to the conference room with a knife for the snack she had brought to work and had earlier placed on the conference room table. Claimant's testimony is uncontradicted the floor is uneven where she stumbled and that her foot grabbed the carpeting in that spot. When the accident occurred, claimant was on-the-clock.

The Workers Compensation Act explicitly states it should be liberally construed to bring employers and employees within its provisions. But once it is determined the parties are within the Act, the Act's provisions must be applied impartially.

> It is the intent of the legislature that the workers compensation act shall be liberally construed for the purpose of bringing employers and employees within the provisions of the act to provide the protections of the workers compensation act to both. The provisions of the workers compensation act shall be applied impartially to both employers and employees in cases arising thereunder.[1]

But the Act also provides that injuries to employees while engaged in social or recreational activities do not arise out of and in the course of a worker's employment.

> The words "arising out of and in the course of employment" as used in the workers compensation act shall not be construed to include injuries to the employee occurring while the employee is on the way to assume the duties of employment or after leaving such duties, the proximate cause of which injury is not the employer's negligence. An employee shall not be construed as being on the way to assume the duties of employment or having left such duties at a time when the worker is on the premises of the employer or on the only available route to or from work which is a route involving a special risk or hazard and which is a route not used by the public except in dealings with the employer. An employee shall not be construed

[1] K.S.A. 44-501(g).

> as being on the way to assume the duties of employment, the employee is a provider of emergency services responding to an emergency.
>
> The words, "arising out of and in the course of employment" as used in the workers compensation act shall not be construed to include injuries to employees while engaged in recreational or social events under circumstances where the employee was under no duty to attend and where the injury did not result from the performance of tasks related to the employee's normal job duties or as specifically instructed to be performed by the employer.[2]

The Act, however, does not define recreational or social events. Under some definitions work is a social activity or event and a recreational activity is something done *after* regular working hours or only away from the workplace. Accordingly, it is unclear whether the legislature intended to exclude from the Act social activity that occurs at work during normal working hours or, instead, whether the legislature intended to exclude those recreational and social activities that occur outside work hours and away from the workplace. Stated another way, did the legislature intend to bar those accidents on the employer's premises that occurred during breaks or while grabbing a chocolate chip cookie or, instead, bar those injuries that occurred off premises at recreational events such as the company picnic and softball game?[3]

Understanding that work entails social interaction and that the Workers Compensation Act is liberally construed to bring both employers and employees within its provisions, the undersigned finds claimant's accident did not occur during a recreational or social event as contemplated by K.S.A. 44-508(f).

Respondent argues the statute should be strictly construed to exclude this accident from coverage under the Act. But such argument does not support respondent's cause. The literal reading of the statute excludes only those accidents that occur while the worker is *engaged* in recreational or social events. And in this instance claimant was not yet engaged in the event as she had left the conference room to obtain a utensil. In addition, she testified that at the time of her accident respondent's employees had not yet notified that the snacks were ready for their enjoyment.

There is yet another reason this accident is compensable under the Act. Snack days are sanctioned and encouraged by respondent. Consequently, the activities of respondent's employees in preparing respondent's premises for that sanctioned activity are incidents of their employment. In that context, the act of claimant procuring the utensil

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[2] K.S.A. 44-508(f).

[3] Perhaps mere coincidence, the 1993 legislature added the language about recreational and social events shortly after a district court judge died after suffering a fatal heart attack during a lawyer's league softball game and the judge's heirs received workers compensation benefits.

from another area of respondent's premises should be considered an incident of claimant's employment. And in any event, claimant's procuring the utensil did not constitute a significant deviation from her regular work activities to constitute an abandonment of her work.

It is true that claimant's accident occurred while she was away from the work she regularly performed in the billing department. But that does not disqualify claimant from receiving benefits in this claim. Generally, injuries that occur during short breaks on the premises of the employer are considered compensable.[4] Breaks benefit both the employer and employee.[5]

Larson's Workers' Compensation Law, Ch. 21 (2006) states:

> Employees who, within the time and space limits of their employment, engage in acts which minister to personal comfort do not thereby leave the course of employment, unless the extent of the departure is so great that an intent to abandon the job temporarily may be inferred, or unless, in some jurisdictions, the method chosen is so unusual and unreasonable that the conduct cannot be considered an incident of the employment.

This general rule clearly recognizes that ministering to personal comfort is conduct that is typically considered an incident of employment. And activities that are incidents of employment are considered to arise "out of" the employment.

Last, but not least, claimant's accident is compensable under the Act as it occurred due to a condition of respondent's premises. At this juncture the evidence is uncontradicted that claimant's accident occurred due to her shoe catching the carpeting in a slightly raised area of the floor.

In summary, claimant was injured in an accident at work, which was caused by the condition of respondent's premises, during normal working hours while performing an activity related to her employment. Accordingly, the undersigned finds and concludes claimant's accident arose out of and in the course of her employment with respondent. Moreover, claimant's accident is not barred by the provisions relating to recreational and social events.

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[4] *See* Larson's Workers' Compensation Law § 13.05(4) (2006); *Wallace v. Sitel of North America*, No. 242,034, 1999 WL 1008023 (Kan. WCAB Oct. 28, 1999).

[5] *Id.; Jay v. Cessna Aircraft Co.*, No. 1,016,400, 2005 WL 3665488 (Kan. WCAB Dec. 14, 2005); *Vaughn v. City of Wichita*, No. 184,562, 1998 WL 100158 (Kan. WCAB Feb. 17, 1998); and *Longoria v. Wesley Rehabilitation Hospital*, No. 220,24, 1997 WL 377961 (Kan. WCAB June 9, 1997).

By statute the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.[6] Moreover, this review of a preliminary hearing Order may be determined by only one Board Member as permitted by K.S.A. 2009 Supp. 44-551(i)(2)(A), as opposed to the entire Board in appeals of final orders.

WHEREFORE, it is the finding, decision and order of the undersigned Board Member that the Order of Administrative Law Judge Thomas Klein dated March 15, 2010, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of May 2010.

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JULIE A.N. SAMPLE
BOARD MEMBER

c: Lawrence M. Gurney, Attorney for Claimant
Edward D. Heath, Jr., Attorney for Self-Insured Respondent
Thomas Klein, Administrative Law Judge

[6] K.S.A. 44-534a.